CHOATE'S FINAL ARGUMENT.

THE NEW-YORK LAWYER CLOSES THE CASE AGAINST THE INCOME TAX.

HE HOLDS THAT A TAX ON RENTALS IS A TAX ON LAND AND THEREFORE A DIRECT TAX

CARE TAKEN BY THE CONSTITUTION-MAKERS-THE COURTROOM CROWDED

Washington, March 13.—The argument in the in-ome tax cases, which has been in progress before the Supreme Court of the United States since last Thursday, was closed to-day in a speech of three hours, delivered by Joseph H. Choate, of New-

in support of the contention that the provisions of the law are unconstitutional. The interest in the argument has grown day by day, as manifested by the extent and eagerness of the througs that have gathered, and it reached a climax to-day with the close of the argument. Long before the hour of opening the court the corridors leading to the chamber were filled with crowds anxious to gain admittance, but not half of them reached the desired goal. When Mr. Choate began, at 12 o'clock, the continuation of his remarks begun yesterday afternoon, he spoke in the mpliment to any orator in the land. Besides the counsel engaged in the case, and the members of Congress who had previously been in attendance upon the argument, there were present ex-Speaker Reed, who sat beside Mr. Springer; Representative Cousins, of Iowa; Senator Mitchell, of Oregon; Senator Cullom, of Iilinois; Señor Gana, Chillan Minister, and Anibal Cruz, his Secretary of Legition, and a large number of ladies.

There was no delay from preliminary proceedings, and as soon as the court was declared open Mr. Choate began his speech. He said that when he closed yesterday he was pointing out the ample means of indirect taxes open to the Government to be applied under the rule of apportionment in equality and uniformity, without resorting to direct taxes, and yet, that under that system of taxes, as a last resort, the entire property of the people of the United States was open to Congress for the welfare and defence of the Government. He called attention to the distribution of the power of taxation and the limitations of the exercise of that and power, from the operation of which it could not, by sent any device, escape. Mr. Choate said he did not impute to constitutional convention such heedlessness or ignorance as was suggested in one of the briefs on the other side; that it did not believe and understand that it covered the whole subject of taxation by its declarations with respect of direct taxes, imports, excises and duties.

Coming to the argument of the propositions he had advanced, Mr. Choate asked: "How about the corpus of personal property?" If a tax upon it was neither a direct tax nor an import, or excise or a duty, what would follow? Just that which Chief Justice Chase said would apply 100 years ago-that it was a tax to be enforced by Congress and laid neither according to apportionment nor of equality and uniformity. And yet in all that 100 years nobody had even suggested that such a tax could be so enforced and collected.

The true rule of construction, Mr. Choate said, was to impute to the work of the Constitutional Convention the same interpretation that everybody else gave to it at the time and had ever since given it. Mr. Wadleigh, of New-Hampshire, had the true idea when he said, discussing the operation of the taxing clause, that it would bear hardly upon his State, but that New-Hampshire would consent to it in order to have the Constitution adopted. Why should it bear hardly upon New-Hampshire, with its mountains and rocky hillsides, were it not that all taxes, except duties, imports and excises, should be apportioned according to population?

Mr. Choate asserted that the tax upon real estate.

the rents and incomes therefrom, was a direct tax, and that the members of the Constitutional Conwention had them in mind as a subject of direct tax when they used that term. He took that, he said, not from anything that had been said by Justice Patterson or anybody else in an effort to limit or prescribe the meaning of the Constitution, but from the generally and universally acknowledged consent of mankind then and now. There had been three periods of direct taxation-in 1722, when trouble with France was apprehended; during the War of 1812, and in the War of the Rebellion. The first was emblematic of them all-it was a direct tax upon real estate, not naked land, as Mr. Carter had contended, but upon houses and lands, productive and unproductive alike.

The second proposition which Mr. Choate ad-

vanced was that a tax upon rents from real estate was indistinguishable from a tax on the real property itself. He had understood the learned At-torney-General yesterday to say no; that rent, after it got into a man's pocket, was money, and that it was that which was taxed. The law proposed to tax rents as personal property and not as real setate. But how could any one pay the tax upo land-Mr. Choate put the question, he said, as applied to the practical, ordinary business affairs of life, of which the Court was bound to take knowledge-except as he paid it from the rentals? The owner could not take a piece of the land and give it the Government as an equivalent for the tax. tween a tax on land and a tax on the rents therefrom?" An unapportioned tax upon real estate, Mr. Choate said, the Constitution forbade, could Mr. Choate said, the Constant services as tax be laid upon the rents of income thereof? No one would say that such a law could be maintained. A tax upon land being forbilden, Congress could not wipe out the value of the land by a tax upon the income therefrom for a period "We have been lawyers all our lives, said Mr. Choate, "and have followed scores of gen-erations in considering the difference between land and the rent or profit thereon. We have found it to be an intangible and insensible thing."

be an intangible and insensible thing Illustrating this, he quoted Coke upon Littleton, which, he said, had been the law in all English Christendom ever since, that when a land-owner grants the profits of his lands to another the feeto the land itself passes, for what is land but the profit thereon? The Attorney-General had said that the law taxed rents as personal property and not as rents. If that were so, it would still need to be apportioned among the States according to population to be effective; but the law assessed a tax on rents as such and not as personal property. He quoted numerous decisions by the Supreme Court of the United States itself, that a tax upon the profits arising from a certain business or thing was a tax upon the business or thing itself. Therefore, he said, he submitted the proposition, although with diffidence, because it had been so stoutly contested his learned adversaries, that a tax upon rents is a tax upon land, and required by the same law and the same Constitution to be apportioned among the States according to population to be effective.

And so as to personal property, Mr. Choate contended that a tax upon it was included within the term of direct taxes, and valid only when apportioned among the States.

'Suppose a man," said Mr. Choate, "assessed or his personal property under a tax apportioned among the States, should refuse to pay on the ground that it was an excise tax, a duty, and appealed to the courts for relief. Would any court

The tax on interest of United States bonds, Mr. Choate said, was a tax on the bond itself, as in the case of rents, and therefore could not be legally collected. The interest on a bond issued by the United States or any other body politic, he said, was a part of the bond itself and inseparable from "What value to me," he asked, "is a bond of the United States payable thirty years hence, but for the fact that in the mean time it promises to pay me interest semi-annually at the rate of 3

Concluding this part of the argument Mr. Choate insisted that he had established beyond controversy the proposition that a tax on rents is a tax on land, and therefore a direct tax. The other side had our briefs two weeks, and the only enswer or suggestion they have been able to make is that of the

in a man's pockets and not as rents." instructive way the compromise made in the Contaxation, by which the States surrendered to the United States the sole right to levy excises, duties and imposts, and to control and regulate commerce between the States, and the right to levy a direct tax upon the real and personal property in the States, as an ultimate source of revenue for the maintenance of the Government itself. It was by that bargain that the adoption of the Constitution was bought, and the question now was, said Mr. ate, whether that bargain should be repudiated and the seaboard States should take back the

Representation and direct taxation went hand in that the framers of the Constitution said twice in that instrument. What was the reason? It was that those men were fresh from the conflict over the injustice of taxation without representation

and they proposed to prevent, as far as they could, the possibility of such an event as is proposed in the present law, that the representatives of a large proportion of the population should vote to compele constituents of the smaller proportion of population to pay more than their just part of the

lation to pay more than their just part of the taxes.

Coming to the effect of the decisions by the Court upon the propositions and down by him, Mr. Choate asserted that the question involved that rents are inseparable from real estate had never been decided by the Court; it had never been considered nor even presented for consideration. "Our adversaries," he continued, "say there is no question here, that we have lost the case in advance under the decisions of the Court. Well, let's say." He then reviewed the issues presented in the several cases referred to, ending with the Springer case. "In that case," said Mr. Choate, "Mr. Springer such for the recovery of a year's income tax when he was a representative of the outside world, not a Representative in Congress, as he has been since, and he averred that he had earned \$50.000 that year. He was a lawyer, and he advocated his own cause. Frobably he was an exception to the rule, which usually obtains in those cases."

expunges the word as "mere surplusage." The meaning of the word as "mere surplusage." The meaning of the word Mr. Choate said, was that in the levying of imposes, duries and excises, whenever done, there should be equal and excises, whenever done, there should be equal and excise whenever done, there should be equal and excise whenever done, there should be equal and excise whenever done, the previously existing rule of inequality. This construction of the phrase, said Mr. Choate, had been uniformly acted upon by the Government ever since its beginning. "I call Your Honor's attention," he said, "to the fact that there was never a tariff act passed by the United States which made the rate of duty depend upon the person or corporation which paid it.

Justice White—Mr. Choate, would not that construction destroy all specific duties provided in every tariff act?

Mr. Choate—We do not claim such a right, We do not say that every like article shall pay the same rate of duty, or that every article of a special class shall pay the same rate.

Justice White—Do not all the decisions of State courts upon the term "equal and uniform" establish the fact that you cannot tax a man with \$1 worth of property at the same rate you do one with \$20?

Mr. Choate—I think not.

Not a single decision had been found in either the Federal or State books, said Mr. Choate, that varied from the meaning of the word contended for by himself and associate counsel—that the tax shall be equal as between man and man.

This brought him, said Mr. Choate, that varied from the meaning of the word contended for by himself and associate counsel—that the tax shall be equal as between man and man.

This brought him, said Mr. Choate, that varied from the meaning of the word contended for by himself and associate counsel—that the inequalities or supposed inequalities of a tariff full could be compensated for by hire self-aritic him another form of taxation. "Is this court ready to go to that length?" he asked. Before leaving this branch of the case, Mr. Ch

sirengthened by the exception quoted from Louisians.

Mr. Choate proceeded then to discuss the illegal exceptions made by be bill, the first and chief of which was the exemption of incomes of 1,000 and less. The meaning and import of the law, he asserted, was to punish the rich for being in that condition. Counsel who had preceded nim advocated the law for the reason that it affected the rich nen only the extremely rich. It hought there was one law for the rich and for the poor. Oh, we are at the parting of the ways, Your Honors. The hill, he declared, was a deliberate strike by those who voted for it at those parts of the United States where money has accumulated. That exception of \$1,000 was the same as other blows at the Constitution within the four corners of the document. No wonder," he said, "that the President refused to sign the bill; no wonder that neither the President nor Secretary of the Treasury recommended the adoption of the income tax."

Justice Harlan—Do you concele that any exception may be made?

Mr. Choate—We do not.

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Mr. Choate—We do not.

While discussing the inequalities of exemption accorded to individuals and to corporations. Justice Brown suggested: "May it not have been that the exception of \$4.000 to the individual was allowed as a reasonable amount for domestic and household expenditures, while the corporation is not compelled to spend anything for those purposes?

Mr. Choate—My impression. Your Honor, is that the law is made alike for the corporation and individual. The discrimination against corporations is but a punishment for their having engaged in that form of business which their States had held out to them as a proper and desirable method.

Referring to the exceptions made in behalf of religious, charitable and elucational institutions, Mr. Choate described them as "deliberate, arbitrary, capricious secretion of the accumulations of great corporations from the operations of the law, without justification, upon any principle of law or of public policy." Mr. Choate said that Trinity Church Corporation, with its hundreds of acres of stores and houses, he was going to say—

Chief Justice Fuller—Is Trinity Church exempt?

Mr. Choate—It is, but it never was before. Columbia, Yale, Harvard colleges with their immense accumulations were to go free, while laho, Dakota and other Western States pay to make up the defect thus occasioned. "But let that go, be generous before you are just." Regarding the effect of the exception of mutual insurance companies and banks and savings banks, Mr. Choate said that the provisions regarding savings banks would enable any man with ten millions or a hundred millions to put them linto a savings banks would enable any man with ten millions or a hundred millions to put them linto a savings banks would enable any man with ten millions or a hundred millions of Congressional policy, or was it captive?

Is the Equitable a mutal company?" asked Justice Harlan with some surprise.

"Well," answered Mr. Choate, with a slight suspicion of a chuckle in his tones, "It has a capital stock of \$100,000, but transacts business on the mustock of \$190,000, but transacts business on the mutual plan."

The last point presented by Mr. Choate was that State and municipal bonds were entitled to exemption from the operation of the law, upon the same theory that National bonds were exempt from State taxation. Mr. Carter had argued that the power to borrow money, which would be impaired if its bonds were subject to unlimited taxation by the State, was necessary to the sovereignty of the State, but that it was not essential to the vistence of the States. Mr. Choate held that it was as necessary an ingredient in the sovereignty of the States as it was of the Nation, and instanced the fact that the city of New-York is arranging to borrow \$5,000,000 with which to provide rapid transit for its inhabitants. The contention that the Federal Government should have the same power to tax the bonds of the States as they have to tax the bonds of the States as they have to tax the bonds of each other. Mr. Choate said, was met by the statement that the States had entered into no such agreement with each other, as they had with the Federal Government.

After applicating to the Court for having trespassed upon their time and attention until, possibly, he had wearred them. Mr. Choate said in closing:

"I have felt the responsibility of this case as I

passed upon their time and attention until, possibly, he had wearied them. Mr. Choate said in closing:

"I have felt the responsibility of this case as I have never felt one before, and never expect to again. I do not believe any member of this court has ever sat, or ever will sit, to hear and decide a case the consequences of which will be so far reaching as the present one, not even the venerable member of the court (Mr. Fiele) who survives from the early days of the Civil War and has sat upon every question of reconstruction, of National destiny, of State destiny, that has come up in this court during the last thirty years. No member of the court will live long enough to hear a case involving a question more vital than this, which affects so seriously the people of these United States, who rely upon the guarantees of the Constitution which our fathers made and under which our people have lived until this time.

"If it is true, as my learned friend (Mr. Carter) said in closing, that the passions of the people are aroused on this subject; if it is true that a mighty army of 70,090,090 citizens is likely to march this way to see about the decision in the pending case, it is all the more vital and important to the future welfare of this country that the court should now determine in the first place whether it has the power, and then, if it has the power, to proceed to execute it in order to put a stop to such legication as that in controversy here."

Mr. Choute spoke for three hours, holding the attention of the large throng with unabated interest to the close.

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Dubtit Notice

DUBLIC NOTICE.

OFFICE OF THE CLERK OF THE COMMON COUNCIL, ROOM NO. 8, CITY HALL, NEW-YORK CITY, New York, March 8, 1895.

Pursuant to develous given to me in the following resolution, which was adopted by the Common Council February 2000, and approved by the Major, March 4th, 1895, 472.

in the course of his duties as such officer of the petitioner in the above settlen.

Swarn to before me this 12th day of February, 1803.

16th P. COHALAN, Notary Public, New-York County, Which was referred to the Committee on Railroads.

All persons interested in the foregoing application are hereby notified to be present at the time and place mentioned in the resolution.

WM. H. TEN EYCK, Clerk of the Common Council.

REAL ESTATE.

BUSINESS AT THE EXCHANGES. In comparison with Tuesday, the auction-rooms were deserted yesterday. Only one parcel was offered at the Broadway Salesrooms, and that was under foreclosure proceedings. Owing to the absence of William Kennelly, the auctioneer, Philip A. Smith occupied his stand and sold, on one bid of

\$20,000. No. 40 West One-hundred-and-thirty-fifth-st., a five-story stonefront flat, with lot 25x59.11, to the James R. Hayden has sold his four-story brownstone dwelling, 25x100, No. 10 West Fifty-third-st.

Ssth-st, I year

Williams, Mary B, to F B Lord, as executor, a s 8sth-st, 66,8 ft w of West End-ave, 5 years

18,000 plaintiff, the American Savings Bank. Wilmerding & Field have sold the three-story brick dwelling, 15x98.9, No. 25 West Thirty-sixth, st., for Colonel J. H. Gray to Henry S. Wilson, for

Charles E. Runk has sold to B. Maguire, six lots on One-hundred-and-thirty-eighth-st., between Eighth and Edgecombe aves., for \$34,500. The lots will be immediately improved by the erection of

private dwellings. The estate of James W. Mitchell has sold No. 219 to 243 West Fifteenth-st., old buildings, on a plot Taxiel feet, for about \$50,000. James Blucker & Sons are mentioned as the brokers in the sale, and

Joseph L. Buttenweiser as the purchaser. Heliner & Wolf have sold to Dr. Swinburne No. 123 West One-hundred-and-twenty-first-st., a three-story dwelling on lot 20x100 feet. Stephen Lovejoy has sold to Builder Charles Ker-nan the lot. 25x100 feet, at the southeast corner of Fifth-ave. and One-hundred-and-twentieth-st. A

five-story house will be erected by the purchaser. L. and S. Sachs are the purchasers of No. 24 West Twenty-second-st, the sale of which for \$53,000 was reported last week.

The Tilden partition suit will be carried, it is said,

to a conclusion, J. Warren Green having been ap-pointed referee Tuesday last. He will sell the Tilden realty, including "Greystone" and the Gramercy Park property.

William Ruhler has sold to Franz Merz the fourstory dwelling, 20x60x160, No. 53 West Eighty-eighth-

Elizabeth Euler has filed plans for the building of four five-story brick flathouses on the north side of East One-hundred-and-thirtieth-st., and 125 feet cast of Amsterdam-ave, 25x0, to cost \$72,000.

Alexander Moore has filed plans for the building of two five-story flathouses, 25x90, on the north side of Sixy-sixth-st. 200 feet west of Eighth-ave, to cost \$30,000.

set \$35,000.
William Speir, jr., has filed plans for the building a twe-story brick dwelling and store of various mensions on the north side of Seventy-fourth-st., twe-en the Boulevard and Amsterdam-ave., to cost 1000. Charles Wirth has filed plans for the building of five-story brick flathouse, 25x78, on the north side of One-hundred-and-thirty-fourth-st., 300 feet east seventh-ave., to cost \$0,000. William Drought has filed plans for the building of two five-story brick flathouses, 34x80, on the outh side of Ninety-first-st., 375 feet west of Co-mbusays, to cost \$0,000.

william Drought his me polar for the building of the given by the common company of the east of Traction Company will be obscided as in providing the following and performs the subscided in the strength of the common common to the common co

The People's Praction tongers respectfully shows in the State of New Jones is a corporation duly organized under the Laws of the State of New Jones of constructing, maintaining and surface railiond for public use in the short surface railiond for surface surface railiond for the surface and operated in Jones in the surface of the following and logic ways in the City and County of the surface of the following and logic ways in the City and County of the surface of the following and logic ways in the City and County of the surface of the following and logic ways in the City and County of the surface of the following and logic ways in the City and County of the surface and wife the surface of the following and logic ways in the City and County of the surface and wife the surface of the following and logic ways in the city and county of the surface of the following and the surface of the following and the surface of the following and the surface railway is the surface railway in t hembelser and wife of 1934 at 204100.

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RECORDED MORTGAGES. Almberf, Edward G. to Emily Beach, n 8 71st-st, 253 ft w of West End ave, 3 years. \$17,500 Same to James G Wilson, No 339 West 71st-st,

Baker, dames, and wife to E B Membra), No. 549 and 542 Broomest, 5 years
Coles, M Therese, to Charles L Tiffany, a country for Amsterdam ave and 100th st, 3 years
Collins, Patrick C, and wife to Farmer's Loan and Trust Co. No. 230 East 9th st, 3 years
Colorane, Eather, et al to Catherine T Schleffelin, 21th st, 1849 ft a of Sthaws, 5 years
Dixon, Joseph, to Catherine M Hale, a s Rasest, 1983, a of Bakensake, 3 years 13,000 Fig. 8. Step. 15 Mary Christenson, W. s. Grove of Trinity ave, 75 ft s. of 165d st. 3 years. Grorarth, Mathias, and mucher to Benjamin M. Hartsherne, No. 30f East 160ft; st. 3 years. Hogan, Thomas, and wife to Gustay Mendelsen, n. 84th st. 543 ft w. of Columbus ave, 1 year. Harkel, Catherine, to Gustay A. Pitkig and another, s. s. 54th st. 225 ft w. of 9th ave, 1 year. Hasbrouck, Amelia, and another to the Equitable 14fe Assurance Society of the United States, No. 147 West 1256ths 2 years. 147 West 126th st. 2 years truck, Frederick, to Bachel Laguna, No 2,387 24 av. 2 years to bermann, Ellise, to Catharine Sackett, No 366 12,500

antee and Trust Co. No 452 West Julies, a years
Hsen, George, to Benjamin M Hartshorne, No 207 East 106th st. 3 years
Loftus, William L, and wife to F W Larow, w s Grant-ave 20.6 ft s of 1624-8t, 3 years.
Lawson, Jacob, to the Mutual Life Insurance Co. N Y, s w corner Boulevard and 104th-st, 1 year.
Magan, Margaret, to Charles Hendricks, n s 45th
st, 117.5 ft e of 7th-ave, 5 years.
Monigomery, James L, to Peter Hassinger, n s
134th-st, 375 ft w of Lenot-ave. . . Col
Mandelbaum, Harris, and another to Julian G
Buckley, s s 10th-st, 200.5 ft w of Broadway,
lease Collateral

1,200

Mandellsaum, Harris, and another to Many E Buckley, as a 10th-st, 200.5 ft w of Broadway, lease
McDonald, Mary T. and another to Mary E Birhards, n s 22d-st, 300 ft w of 8th-ave, 1 year. Norts, John G, to William Z Larned, executor, Nos 233 and 255 7th-ave, 2 years.
Mortis, Julien G, and wife to Meyer I. Sire, Nos 233 and 255 7th-ave, installments. •.
O'Donnell, Joseph P, to the Mott Haven Co-operative Building Association, s e s Washington-ave, 185.7 ft n of Quarry Boad, demand.

ave, 185.7 ft n of Quarry Boad, demand.

Tollatschek, Jacob, to Title Guarantee and Trust Company, No 89 Amsterdam-ave, 5 years.
Same, to Adolph J H Meyer, e s 10th-ave, 75 ft n of 6id-st, 2 years.
Baile, Henry F C, and wife to the East River Savings Institution, No 106 Forsyth st, 1 year.
Rosenblum, Morris, and wife to Marle Camenen, No 453 East 57th-st, note.
Buck, August H, to Sarah H Powell, n s 110th-st, 1285 ft e of 3d-ave, demand.

Slade, Francis L, to New York Eye and Bar Infirmary, s s 52d-st, 250 ft w of 5th-ave, 3 years Schulthela, Gottlieb, and another to Edward B

Fellows, ist-st, w s, lots 19 and 20, map Prospect Hill, 3 years, Sattenstein, Betsey, and another to Sarah Dinkel-man, s w corner belancey and Pitt sts, install-

man, s w corner Delancey and Pitt sts, installments
Tinken, Mary A, to Rose F Livingston, s s,
521-st. 275 ft w of 9th-ave, demand.
Van Rensselaer, Olivia P A, and another to the
Germania Life insurance Company, s w corner
West End-ave and S5th-st. 3 years.
Vossler, Daniel, Jr. to Murray Hill Bank, s s
130th-st, 160 ft e of 5th-ave, 1 year.
Williams, Mary B, to Timothy R Green, n s
S8th-st, 66.8 ft w of West End-ave, demand.
Weed, Joseph E, to the Union Theological Seminary, City New-York, s s 78th-st, 68 ft e of
West End-ave, 3 years.
Whelan, William, and wife to the Emigrant Industrial Savings Bank, w s 1st-ave, 130.8 ft s of
S8th-st, 1 year
Williams, Mary B, to F B Lord, as executor. 22,000

Real Estate.

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REAL ESTATE

Anction Sales of Real Estate.

RICHARD V. HARNETT & CO.

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WILL SELL AT AUCTION ON

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This new and magnificent building is now ready for company and can be inspected at all times. Elevators unning. Covers plot 100x300 feet. STORES, LOFTS AND OFFICES FOR RENTAL.

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Fireproof Throughout.

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Caleline and service of the very highest order. Special facilities for large dinners. Private dining-rooms. Open until 12 p. m. for the accommodation of theatre parties

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A cute little upright plano for \$50.
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Miscellaneous.

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